

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.126 OF 2005

IN

WRIT PETITION NO.243 OF 2005

The Greater Bombay Co-op.Bank Ltd. ..Petitioner.

Vs.

M/s.Ganesh Benzoplast Pvt.Ltd.&0rs...Respondents.

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Mr.Kirit Munshi with Mr.Sameer Bhalekar for the
Petitioner.

Mr.D.H.Mehta i/b. Little & Co. for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

May 4, 2005.

P.C. :

1. The Notice of Motion has been moved for recalling an order passed by this Court on 18th February 2005.

2. The very first sentence of the order of this Court records that Learned Counsel appearing on

behalf of the Petitioner and the First Respondent (to the Writ Petition) were instructed by authorised representatives in proceedings before the Court. In the order dated 18th February 2005, this Court recorded that Counsel had agreed before the Court that the order which the Court then passed may be passed at their request and with the consent of parties. In the affidavit in support of the Notice of Motion which has been filed, it has been stated that the Legal Manager of the Bank, Mr. Upendra Mahadik, who was present before the Court on 18th February 2005 had no authority to furnish his consent. He deposes that above him in the hierarchy are two Assistant General Managers, namely Assistant General Manager, Legal and Assistant General Manager, Recovery; the General Manager, the Chairman and Managing Director; and the Board of Directors. It has been stated that the final authority in matters relating to the grant of loans and recovery thereof including any concessions in amounts to be repaid by borrowers or the grant of installments for repayment thereof rests with the Board of Directors. A further affidavit has been filed on behalf of the Bank by its General Manager. Reliance has been placed on a circular dated 30th June 1999 issued by the Reserve Bank of India. Under the said Circular, wilful

defaults include various categories including the disposal/removal of securities without the Bank's knowledge. It is clarified that in the case of wilful defaulters, only the Board of Directors should consider any fresh limit/renewal/enhancement on the merits of each case. In the present case, it has been stated that in terms of Clause 2(iii)(c) of the said circular, the Bank had declared the applicant to the Notice of Motion as a wilful defaulter on the ground that it had diverted and removed securities consisting of rents receivable in respect of storage tanks without the knowledge of the Bank. Reliance has also been placed on the Draft Guidelines for One time Settlement of non-performing assets of Urban Co-operative Banks in which it has been clarified by the Reserve Bank of India that cases of wilful default, frauds and malfeasance will not be covered by the Scheme.

3. On the other hand, Counsel appearing on behalf of the First Respondent has placed reliance on an order passed by the Debts Recovery Tribunal on 7th March 2005 on an appeal preferred by the First Respondent. It was urged that the Bank has acted on the terms of the compromise.

4. Having regard to the averments made in several affidavits that have been filed in support of the Notice of Motion, I am of the view that it would be in the interests of justice to recall the order of the Court dated 18th February 1995 and to restore the petition for hearing. The Bank has produced before the Court, material that does indicate that the Legal Manager was not authorised to enter into the settlement. The order of the Court shows that Counsel who appeared on behalf of the Bank acted bonafide in the belief that the Legal Manager had necessary authorisation. Therefore, even if Counsel for the Bank could have independently settled the matter, the order of the Court shows that in the present case Counsel acted upon the authority of the Legal Manager to instruct Counsel to agree to the terms of the compromise. The order passed by the Debts Recovery Tribunal would not carry the case of the First Respondent any further. The application was disposed of as not being tenable in the light of the order of this Court dated 18th February 2005. In the affidavit in support of the Motion of the General Manager dated 25th April 2005, an explanation has been tendered in para 5 of the circumstances in which a statement was made before the Debts Recovery Tribunal on behalf of the Bank. Be that as it may, Counsel

appearing on behalf of the Bank has fairly stated that it would be appropriate if the application before the DRT is restored for disposal in accordance with law since the application was disposed of on 7th March 2005 by the Debts Recovery Tribunal, in view of the Consent Terms filed in this Court. The application before the DRT is hence restored by consent for disposal in accordance with law. Counsel appearing for the Bank has further stated that the Bank has not encashed a cheque for Rs.5 lakhs and this cheque which is lying with the Bank, shall be returned forthwith to the First Respondent. Counsel for the Bank further states that a cheque for Rs.5 lakhs which was encashed by the Bank, shall be returned back to the First Respondent within a period of one week from today.

5. Counsel appearing on behalf of the First Respondent states that a reference has been registered under the Sick Industrial Companies (Special Provisions) Act, 1985, in respect of the First Respondent by the B.I.F.R.

6. In these circumstances, this Motion is made absolute in terms of prayer clause (a).

7. The Petition shall now be set down for admission by the Registry on 6th June 2005.

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